SUPREME COURT OF THE UNITED STATES

CHARLES KENNETH FOSTER *v.* FLORIDA, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 01–10868. Decided October 21,2002

JUSTICE THOMAS, concurring in denial of certiorari.

In the three years since we last debated this meritless claim in *Knight* v. *Florida*, 528 U. S. 990 (1999) (THOMAS, J., concurring), nothing has changed in our constitutional jurisprudence.* I therefore have little to add to my previous assessment of JUSTICE BREYER's musings. See *id.,* at 992 ("Consistency would seem to demand that those who accept our death penalty jurisprudence as a given also accept the lengthy delay between sentencing and execution as a necessary consequence").

This Court's vacatur of a death sentence because of constitutional error does not bar new sentencing proceedings resulting in a reimposition of the death penalty. Petitioner seeks what we would not grant to a death-row inmate who had suffered the most egregious of constitu-

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*JUSTICE BREYER notes that the Supreme Court of Canada has expressed concern over delays in the administration of the death penalty in the United States. *Post*, at 2–3. I daresay that court would be even more alarmed were there, as Blackstone commended, only a 48-hour delay between sentence and execution. *Knight,* 528 U. S., at 990–991, n. 1 (THOMAS, J., concurring) (citing 4 W. Blackstone, Commentaries *397). In any event, JUSTICE BREYER has only added another foreign court to his list while still failing to ground support for his theory in any decision by an American court. *Id.,* at 990. While Congress, as a *legislature*, may wish to consider the actions of other nations on any issue it likes, this Court's Eighth Amendment jurisprudence should not impose foreign moods, fads, or fashions on Americans. Cf. *Atkins* v. *Virginia*, 536 U. S. —, —, (2002) (REHNQUIST, C. J., dissenting) (slip op., at 1–2).

tional errors in his sentencing proceedings—a permanent bar to execution. Murderers such as petitioner who are not apprehended and tried suffer from the fear and anxiety that they will one day be caught and punished for their crimes—perhaps even sentenced to death. Will JUSTICE BREYER next have us consider the constitutionality of capital murder trials that occur long after the commission of the crime simply because the criminal defendants, who have evaded capture, have been so long suffering?

Petitioner could long ago have ended his "anxieties and uncertainties," *post,* at 3, by submitting to what the people of Florida have deemed him to deserve: execution. Moreover, this judgment would not have been made had petitioner not slit Julian Lanier's throat, dragged him into bushes, and then, when petitioner realized that he could hear Lanier breathing, cut his spine. 369 So. 2d 928, 929 (Fla. 1979).